

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 232

AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 32-21-2-3 IS AMENDED TO READ AS FOLLOWS: Sec. 3. **(a)** For a conveyance, a mortgage, or an instrument of writing to be recorded, it must be:

- (1) acknowledged by the grantor; or
- (2) proved before a:
 - (A) judge;
 - (B) clerk of a court of record;
 - (C) county auditor;
 - (D) county recorder;
 - (E) notary public;
 - (F) mayor of a city in Indiana or any other state;
 - (G) commissioner appointed in a state other than Indiana by the governor of Indiana;
 - (H) minister, charge d'affaires, or consul of the United States in any foreign country;
 - (I) clerk of the city county council for a consolidated city, city clerk for a second class city, or clerk-treasurer for a third class city;
 - (J) clerk-treasurer for a town; or
 - (K) person authorized under IC 2-3-4-1.



C
o
p
y

(b) In addition to the requirements under subsection (a), a conveyance may not be recorded after June 30, 2007, unless it meets the requirements of this subsection. If the mailing address on the conveyance is not a street address or a rural route address of the grantee, the conveyance must also include a street address or rural route address of the grantee after the mailing address.

SECTION 2. IC 32-21-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) The following must be recorded in the recorder's office of the county where the land is situated:

- (1) A conveyance or mortgage of land or of any interest in land.
- (2) A lease for more than three (3) years.

(b) A conveyance, mortgage, or lease takes priority according to the time of its filing. The conveyance, mortgage, or lease is fraudulent and void as against any subsequent purchaser, lessee, or mortgagee in good faith and for a valuable consideration if the purchaser's, lessee's, or mortgagee's deed, mortgage, or lease is first recorded.

(c) This subsection applies only to a mortgage. If:

(1) an instrument referred to in subsection (a) is recorded; and

(2) the instrument does not comply with the:

(A) requirements of:

- (i) IC 32-21-2-3; or**
- (ii) IC 32-21-2-7; or**

(B) technical requirements of IC 36-2-11-16(c);

the instrument is validly recorded and provides constructive notice of the contents of the instrument as of the date of filing.

SECTION 3. IC 32-28-14 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 14. Homeowners Association Liens

Sec. 1. As used in this chapter, "common expenses" means:

(1) all sums lawfully assessed against a subdivision by a homeowners association;

(2) expenses of:

- (A) administration;**
- (B) maintenance;**
- (C) repair; or**
- (D) replacement;**

of subdivision common areas and facilities;

(3) expenses agreed upon as common expenses by a homeowners association; and

**C
o
p
y**



(4) expenses declared common expenses by the bylaws or another written instrument of a homeowners association.

Sec. 2. As used in this chapter, "homeowners association" means all the owners of real estate in a subdivision acting as an entity in accordance with any:

- (1) bylaws;
- (2) covenants; or
- (3) other written instruments;

of the homeowners association.

Sec. 3. As used in this chapter, "real estate" means a right, a title, or an interest in real property.

Sec. 4. As used in this chapter, "subdivision" means the division of a parcel of land into lots, parcels, tracts, units, or interests in the manner defined and prescribed by a subdivision control ordinance adopted by a legislative body under IC 36-7-4.

Sec. 5. (a) All sums assessed by a homeowners association but unpaid for the share of the common expenses chargeable to an owner of real estate in a subdivision constitute a homeowners association lien on the real estate effective as provided in section 6 of this chapter.

(b) The priority of a homeowners association lien is established on the date the notice of the lien is recorded under section 6 of this chapter.

(c) A notice of lien may not be recorded under subsection (a) unless the notice of lien:

- (1) contains:
 - (A) the name and address of the homeowners association;
 - (B) the address and legal description of the property that is subject to the lien;
 - (C) the name of the owner of the property that is subject to the lien; and
 - (D) the amount of the lien; and
- (2) is:
 - (A) signed by an officer of the homeowners association; and
 - (B) acknowledged as in the case of deeds.

Sec. 6. (a) A homeowners association lien under this chapter attaches to real estate upon the recording of a notice of lien by the homeowners association in the office of the recorder of the county in which the real estate is located.

(b) A homeowners association lien under this chapter attaches on the date of the recording of the notice of the lien under

**C
o
p
y**



subsection (a) and does not relate back to:

- (1) a date specified in the bylaws, the covenants, or another written instrument of the homeowners association; or
- (2) the date the common expenses were assessed.

Sec. 7. (a) Except as provided in subsection (b), in a voluntary conveyance, the grantee of real estate is jointly and severally liable with the grantor for all unpaid assessments against the grantor for the grantor's share of the common expenses incurred before the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts of common expenses paid by the grantee.

(b) The grantee:

- (1) is entitled to a statement from the manager, board of directors, or other governing authority of the homeowners association that sets forth the amount of the unpaid assessments against the grantor; and
- (2) is not liable for, and the real estate conveyed is not subject to a homeowners association lien for, any unpaid assessments against the grantor unless the lien for unpaid assessments is recorded under section 6 of this chapter before recording the deed by which the grantee takes title.

(c) If the mortgagee of a first mortgage of record or other purchaser of real estate obtains title to the real estate as a result of foreclosure of the first mortgage, the acquirer of title or the acquirer's successors and assigns are not liable for the share of the common expenses or assessments by the homeowners association chargeable to the real estate that became due before the acquisition of title to real estate by the acquirer. The unpaid share of common expenses or assessments is considered to be common expenses collectible from all of the owners of real estate in the subdivision, including the acquirer or the acquirer's successors and assigns.

Sec. 8. (a) A homeowners association may enforce a homeowners association lien by filing a complaint in the circuit or superior court of the county where the real estate that is the subject of the lien is located. The complaint must be filed not later than one (1) year after the date the statement and notice of intention to hold a lien was recorded under section 6 of this chapter.

(b) If a lien is not enforced within the time set forth in subsection (a), the lien is void.

(c) If a lien is foreclosed under this chapter, the court rendering judgment shall order a sale to be made of the real estate subject to

**C
o
p
y**



the lien. The officers making the sale shall sell the real estate without any relief from valuation or appraisal laws.

Sec. 9. (a) A homeowners association lien under this chapter is void if both of the following occur:

- (1) The owner of the real estate subject to the homeowners association lien or any person or corporation having an interest in the real estate, including a mortgagee or a lienholder, provides written notice to the owner or holder of the lien to file an action to foreclose the lien.
- (2) The owner or holder of the lien fails to file an action to foreclose the lien in the county where the real estate is located within thirty (30) days after the date the owner or holder of the lien received the notice described in subdivision (1).

However, this section does not prevent the claim from being collected as other claims are collected by law.

(b) A person who gives notice under subsection (a)(1) by registered or certified mail to the owner or holder of the homeowners association lien at the address given in the recorded statement may file an affidavit of service of the notice to file an action to foreclose the lien with the recorder of the county in which the real estate is located. The affidavit must state the following:

- (1) The facts of the notice.
- (2) That more than thirty (30) days have passed since the notice was received by the owner or holder of the lien.
- (3) That an action for foreclosure of the lien is not pending.
- (4) That an unsatisfied judgment has not been rendered on the lien.

(c) The recorder shall record the affidavit of service in the miscellaneous record book of the recorder's office. When the recorder records the affidavit under this subsection, the real estate described in the homeowners association lien is released from the lien.

(d) An affidavit recorded under subsection (c) must cross reference the lien.

**C
o
p
y**



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

**C
o
p
y**

